

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

R. WAYNE JOHNSON
TDCJ-CID #282756

v.

EMILY KENNEDY

§
§
§
§
§
§

C.A. NO. C-05-228


**MEMORANDUM OPINION AND ORDER DENYING PLAINTIFF'S MOTIONS
TO PAY THE CIVIL FILING FEE IN INSTALLMENTS**

On June 16, 2005, the United States Magistrate Judge filed her Memorandum and Recommendation in this cause (D.E. 9). Objections were timely filed (D.E. 12) by plaintiff, in which he argues (1) that 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act (PLRA), is unconstitutional and should not be applied to his case and (2) that the case law, specifically *Carson v. Johnson*, relied upon by the Magistrate Judge is not controlling.

The Court finds that both of these objections are without merit. The Fifth Circuit has held that 28 U.S.C. § 1915, as amended by the PLRA, is constitutional. *Carson v. Johnson*, 112 F.3d 818, 821 (5th Cir. 1997). This case has not been explicitly or implicitly overruled. Therefore, it does control here. Having reviewed *de novo* the Magistrate Judge's Memorandum and Recommendation and the pleadings on file, this Court hereby adopts as its own the findings and conclusions of the Magistrate Judge.

Accordingly, plaintiff's motions to pay the civil filing fee in installments (D.E. 2, 7) are DENIED.

ORDERED this 24th day of August, 2005.



HAYDEN HEAD
CHIEF JUDGE